(Ex. A, Ponsonby Aff. ¶ 4.) SWBT may still be practicing this discriminatory conduct today.

The scope of SWBT's discriminatory practice is unknown. SWBT's blatant discrimination against third-party DSL orders could affect not only third-party ISPs, but DSL CLECs as well. Accordingly, this Commission should order SWBT to cease the discriminatory activity described above and should investigate SWBT's order administration and provisioning procedures to ensure that such procedures are competitively neutral.

B. This Commission Should Ensure That SWBT Employees Do Not Disparage CLEC Services.

Covad has received reports from end users stating that SWBT technicians responsible for installing the xDSL loops ordered by Covad have disparaged Covad DSL services and have recommended to end users that SWBT's DSL service could be installed much more quickly. The Commission should order SWBT to cease this conduct and should investigate the provisioning practices of SWBT's field technicians to ensure competitive neutrality.

III. SWBT'S INADEQUATE PROVISIONING OF CLEC BRI LOOPS IS NOT EXCUSED.

At paragraph 53 of the Supplemental Joint Affidavit of Carol A. Chapman and William R. Dysart submitted as part of SBC's amended federal 271 application, SBC attempts to explain its failure to meet the 271 checklist item regarding BRI loops by contending that CLEC IDSL services are "incompatible" with BRI loop design. SWBT also contends that a new IDSL UNE is needed. These statements are not correct and do not excuse SWBT's discriminatory performance.

Bellcore Standard TR 000393 is the physical layer specification for ISDN BRI. It's title, "Generic Requirements for ISDN Basic Access Digital Subscriber Lines" clearly indicates that it is also intended to be the physical layer specification for IDSL (ISDN Digital Subscriber Line). Bellcore Standard TR 000393 governs the physical layers of both ISDN and IDSL.

Covad requires only a functional, Bellcore 393-compliant loop over which to offer its IDSL service. The problem encountered by SWBT in provisioning these services is not due to IDSL "incompatibility," but is caused by SWBT's use of a specific type of defective DLC system: the Marconi DISC*S DLC. Notably, SWBT does not identify any other DLC systems with which it has encountered problems provisioning IDSL. Thus, even if SWBT's excuse were valid, which it is not, it would not explain SWBT's substandard provisioning of CLEC BRI loops when Marconi DISC*S DLC is not present or the provisioning of loops over the two-thirds of DISC*S slots that currently support IDSL.

Covad's tests of the Marconi DISC*S system reveal that DISC*S systems presently contain a "bug," such that any loop provisioned in the first four slots of a DISC*S system will not comply with Bellcore 393. Thus, the "root cause" of SWBT's provisioning problems is SWBT's use of non-compliant DLC technology, not any compatibility problems with CLECs IDSL services. Indeed, the last slot of a Marconi DISC*S DLC system does not support even ILEC ISDN BRI service.

Contrary to the statements of SWBT's witnesses, however, a new IDSL UNE is not needed. The resolution of provisioning problems caused by SWBT's use of defective Marconi DISC*S systems is wholly within SWBT's control. SWBT, like other

ILECs, merely chooses not to provision its ISDN services through the last slot on a DISC*S DLC because such slots support neither ISDN nor IDSL. SWBT easily could provide the same benefit to CLEC IDSL orders by flagging the first four defective slots of the DISC*S system as unsuitable for IDSL.

Accordingly, this Commission should reject SWBT's "excuse" for its substandard provisioning of CLEC BRI loops. The Commission should also reject SWBT's suggestion that a new loop offering is necessary for IDSL services. SWBT should be required to apply the same procedures for avoiding defective slots on the Marconi DISCS*S DLC for CLEC services as it applies to the provisioning of its own ISDN services.

CONCLUSION

For the foregoing reasons, this Commission (1) should prohibit SWBT from surreptitiously imposing spectrum management standards that have not been approved by the FCC, (2) should order SWBT to cease its discriminatory activities regarding order administration and loop provisioning and should investigate further SWBT practices and policies, and (3) should reject SWBT's "excuse" for its substandard provisioning of CLEC BRI loops.

Respectfully submitted,

Christopher V. Goodpastor
Regional Counsel
Covad Communications Company
9600 Great Hills Trail, Suite 150W
Austin, Texas 78759
(512) 502-1713
(512) 502-1777 Facsimile
State Bar No. 00791991

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record via hand-delivery, first-class mail, or facsimile this 20th day of April, 2000.

CHRISTOPHER V. GOODPASTOR

DOCKET NO. 22165

IMPLEMENTATION OF DOCKET	§	**PUBLIC UTILITY COMMISSION**
NUMBERS 20226 AND 20272	§	
	§	**OF TEXAS**
	§	

ORDER NO. 5

ORDER REQUESTING ADDITIONAL INFORMATION REGARDING SWBT'S PLAN TO ENSURE COMPETITIVE NEUTRALITY AND NONDISCRIMINATION IN THE USE OF COMPETITIVELY RELEVANT INFORMATION

I. SUMMARY

The Arbitration Award in Docket Nos. 20226 and 20272,[1] ordered Southwestern Bell Telephone Company (SWBT) to create "firewalls" to separate SWBT's retail and wholesale xDSL organizations. The purpose of the "firewalls" was to restrict the flow of competitively beneficial information. During the proceeding, there were concerns that SWBT could inappropriately use confidential information provided by competitive local exchange carriers (CLECs) seeking to provision xDSL services. The information provided is necessary to implement the xDSL loop qualification process and if used inappropriately, could enhance SWBT's competitive position in the xDSL market. SWBT filed its plan to ensure the competitive neutrality and nondiscrimination in the use of competitively relevant information on January 14, 2000.

II. REQUEST FOR ADDITIONAL INFORMATION

In order to determine if SWBT's "Letter to Management Employees,"[2] fulfills SWBT's obligations as set forth in Arbitration Award, the Commission requests that SWBT provide the following additional information no later than 3pm, Friday, April 14, 2000:

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[1] See *Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Docket No. 20226, Arbitration Award, DPL Issue Nos. 16 (Nov. 30, 1999); and *Petition of DIECA Communications, Inc., d/b/a/ COVAD Communications Company for Arbitration of interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Docket No. 20272, Arbitration Award, DPL Issue No. 16 (Nov. 30, 1999).

1. SWBT shall hand deliver a copy of the SBC Code of Business Conduct and the SBC Competition Guidelines, as cited in SWBT's Letter to Management Employees[3],to the Arbitrators.

2. SWBT shall file a letter detailing the current status and future timelines associated with ASI's conversion into a separate affiliate as attested to in the Affidavit of Lincoln Brown.[4]

SIGNED AT AUSTIN, TEXAS the 10th day of April 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

Rowland L Curry

ROWLAND L. CURRY
ARBITRATOR

Melanie M Malone

MELANIE M. MALONE
ARBITRATOR

---

[2] See Appendix A. *SWBT's Notice of Plan to Ensure Competitive Neutrality and Nondiscrimination in the Use of Competitively Relevant Information*, Docket No. 20226 and 20272 (Jan. 14, 2000).

[3] Id. at 7.

[4] Id at 10.

Q: opd/arbs/22165/Order No. 5

DOCKET NO. 22165

IMPLEMENTATION OF DOCKET	§	**PUBLIC UTILITY COMMISSION**
NUMBERS 20226 AND 20272	§	**OF TEXAS**
	§	

ORDER NO. 7

ORDER MODIFYING SWBT'S PLAN TO ENSURE COMPETITIVE NEUTRALITY AND NONDISCRIMINATION IN THE USE OF COMPETITIVELY RELEVANT INFORMATION

The Arbitration Award in Docket Nos. 20226 and 20272[1] ordered Southwestern Bell Telephone Company (SWBT) to create "firewalls" to separate SWBT's retail and wholesale digital subscriber line organizations. The purpose of the "firewalls" was to restrict the flow of competitively beneficial information. SWBT filed its plan to ensure the competitive neutrality and nondiscrimination in the use of competitively relevant information on January 14, 2000.[2] SWBT included a letter (Appendix A of that filing) to management employees discussing these concerns. SWBT filed additional information relating to the plan, as requested by the Arbitrators, on April 14, 2000.

I. MODIFICATIONS TO SWBT'S PLAN

In order to fulfill SWBT's obligations as set forth in the Arbitration Award, the Arbitrators order SWBT to incorporate the following modifications into its plan. The Arbitrators order SWBT to file a modified plan, no later than Monday, May 1, 2000, for approval.

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[1] See *Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Docket No. 20226, Arbitration Award, DPL Issue Nos. 16 (Nov. 30, 1999); and *Petition of DIECA Communications, Inc., d/b/a/ COVAD Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Docket No. 20272, Arbitration Award, DPL Issue No. 16 (Nov. 30, 1999).

[2] SWBT's Notice of Plan to Ensure Competitive Neutrality and Nondiscrimination in the Use of Competitively Relevant Information, January 14, 2000.

1. The beginning of the proposed letter shall address the Arbitrators' original concern regarding the sharing of sensitive competitor information between SWBT's retail and wholesale divisions, specifically when new products are being developed.

2. The letter shall explain that the Arbitration Award ordered Southwestern Bell Telephone Company (SWBT) to create "firewalls" to separate SWBT's retail and wholesale xDSL organizations. The letter shall explain that the retail xDSL services are now provided by SBC Advanced Solutions Inc. (ASI). The letter shall stress that ASI is a new, distinct legal and business entity, and shall be treated as any other competitor-customer company.

3. The letter shall clearly explain the legal and business status between ASI and SBC. The letter shall also clearly explain the legal and business status between ASI and SWBT.

4. The letter shall clearly explain the new legal and business status among subsidiaries and affiliates following the merger of SBC and Ameritech.

5. In discussing SWBT's relationships with third parties, retail sales, competitive local exchange carriers (CLECs), and other competitors, the letter shall explicitly state that ASI is included in this category of relations with regards to SWBT's network provisioning, information services, and wholesale activities concerning Telco Loop Information.

6. The letter shall explicitly mandate that SWBT management employees thoroughly educate all personnel dealing with these issues.

7. The letter shall clearly state that the SBC Competition Guidelines will be revised to reflect this new policy clarifying the relationships between SBC affiliates and subsidiaries.

8. Copies of all referenced sections of SBC's Competition Guidelines and/or SBC's Code of Business Conduct shall be attached to the letter.

II. MODIFICATIONS TO SBC'S COMPETITION GUIDELINES

In order to fulfill SWBT's obligations as set forth in the Arbitration Award, the Arbitrators order SBC to revise its Competition Guidelines. The SBC Competition Guidelines shall be updated to reflect the new policy clarifying the relationships between SBC affiliates and subsidiaries. SWBT shall file an updated version of the SBC Competition Guideline within 30 days of the Arbitrator's approval of SWBT's modified plan.

SIGNED AT AUSTIN, TEXAS the _____ day of April 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

ROWLAND L. CURRY
ARBITRATOR

MELANIE M. MALONE
ARBITRATOR

Q: opd/arbs/22165/Order No. 5

12 Oak Park
Bedford, MA 01730

Covad

April 3, 2000

Mary Pat Regan
Director, SBC Account Team
250 N.Orleans
Chicago, IL

Mary Pat,

I am writing to express my concern over the tone and direction of the recent weekly operations calls between SBC/Ameritech and Covad. I am particularly disturbed by the seeming inability on the part of Rene Stiles to move Covad's operational issues in the Ameritech region forward. On several occasions this month, Ms. Stiles has refused to address Covad's operational issues citing Covad's pending legal actions. At best, Ms. Stiles' "excuse" indicates that SBC/Ameritech has too few resources devoted to Covad's account. At worst, Ms. Stiles' statements demonstrate retaliatory conduct by SBC/Ameritech in light of Covad's decision to raise legitimate issues before the FCC and other legal and regulatory bodies.

As I mentioned, Ms. Stiles has recently attempted to justify her failure to address Covad's operational issues by citing Covad's legal activities. Ms. Stiles first used this excuse at our meeting in Chicago on March 13th of this year. At that meeting, Covad reiterated its long-standing request to implement a testing and acceptance process for loops. Ms. Stiles refused to address this issues because of a "gag" order issued by SBC attorneys, related to an unspecified "legal action" commenced by Covad. I investigated with our Legal Department, and no "legal action" has been taken by Covad that should prevent an Account Manager from SBC from continuing to address operations issues.

Following that meeting, Ms. Stiles continued to handle Covad's issues in an inappropriate and unprofessional manner. Two weeks ago, Ms. Stiles stated that the weekly Covad-Ameritech operations calls had turned into a "bitch session" for Covad because Covad continued to press hard for resolution on issues that had been outstanding for several months. I was shocked by Ms. Stiles' response to Covad's legitimate business concerns. Ms. Stiles did commit, however, to have a response to Covad's outstanding issues within two weeks (in other words, by this week's call).

Unfortunately, on our call on March 27th, Ms. Stiles stated that she could not provide Covad with the promised updates because "Covad had filed another" legal action. When probed further, Ms. Stiles referenced a filing Covad made in Texas and that she was overwhelmed with document requests. I again investigated the issue with our Legal Department. The only "actions" taken by Covad in March regarding SBC's performance in Texas were ex parte presentations to the Federal Communications Commission relating to SBC's application to provide interLATA service in Texas. Covad is one of several competitive carriers that are involved in that proceeding. Again, I am perplexed by Ms. Stiles seeming inability or unwillingness to address Covad's operations issues based on vague claims of pending unrelated "legal actions."

The power of operations folks working together in a weekly forum is that we continue to move operational issues forward, regardless of what lawyers from either side may be doing. I am concerned that Ms. Stiles has thrown a significant roadblock in that path. If Ms. Stiles must also be used by SBC to support its Texas long-distance entry aspirations, SBC/Ameritech needs to devote more resources to our account. It is simply unacceptable for SBC/Ameritech to refuse to address Covad's operational issues because it would rather devote resources to its Texas advocacy.

Please let me know what is going to be done to change the path we are moving down. Also, I am expecting an update on all of our outstanding operations issues, including test and accept process, no later than close of business, next week, by Friday, April 7, 2000.

Sincerely,

M.J. Cutcher
VP ILEC Operations

cc: Frank Thomas, Covad Communications Company

Thomas Harvey, SBC

Information Industry Services
Floor 3
350 North Orleans Street
Chicago, IL 60654

Ameritech®

April 11, 2000

Mindy Cutcher
VP ILEC Operations
Covad Communications
12 Oak Park
Bedford, MA 01730

Dear Mindy,

Thank you for your letter of April 3, 2000 and for your advisement regarding customer support issues.

SBC has a long term partnership interest with Covad and it is our performance expectation to meet Covad's customer needs in an expedient, timely manner and with a high level of quality and responsiveness. Any deviation to this commitment is a serious concern. I will address these issues with Renee and follow up with you next week with an action plan for moving forward.

Thank you again.

Mary Pat Regan

Mary Pat Regan
Director Sales & Service
Major Accounts, LPAT

CONFIDENTIAL EXHIBIT CGS-9

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance For Provision of In-Region InterLATA Services in Texas	)	CC Docket No. 00-65

DECLARATION OF DAVID ROSENSTEIN ON BEHALF OF COVAD COMMUNICATIONS COMPANY

DECLARATION OF DAVID ROSENSTEIN

1. My name is David Rosenstein. I am over 18 years of age and am competent to make this declaration. The statements in this declaration are true and correct.

2. I am currently Manager of Access Technologies in the Network Engineering organization of Covad Communications. I have held this position since May 1998. I am responsible for all access equipment employed in the Covad network. This includes Digital Subscriber Line Customer Premise and Central Office Equipment. Prior to working for Covad, I was employed for Rockefeller Group Telecommunications in New York City, where my responsibilities included launching a DSL based Internet access service for tenants of Rockefeller Center and surrounding properties.

3. The purpose of this declaration is to rebut and clarify several statements made by SBC's witnesses, Ms. Carol Chapman and Mr. Randy Dysart, in their April 5, 2000 Supplemental Affidavit (the "Chapman/Dysart Supplemental Affidavit") in this proceeding. In particular, I will provide testimony discussing paragraphs. 52 through 62 of the Chapman/Dysart Supplemental Affidavit, which is labeled, "Incompatibility of IDSL." I have provided testimony on this issue before state commissions, including Georgia and, most recently, Texas.

4. In short, I believe that Chapman and Dysart are attempting to utilize a problem manifest in equipment SBC has acquired in order to excuse for their poor loop delivery performance to CLECs. I will show in this Declaration that Champan's and Dysart's description of the "incompatibility of IDSL" to be factually false. I was

involved in the original field diagnosis of the issue in question as well as the subsequent cooperative testing between Marconi, Nokia, and Covad.

Summary of Covad Position

5. Covad has previously filed two letters with the FCC in this proceeding that discuss the Marconi DISC*S issue, on March 1, 2000 and March 10, 2000. It is not my intent to completely restate that position in this Declaration; however, it is important to summarize Covad's position, to provide a context for this Declaration.

6. Southwestern Bell Telephone Company ("SWBT") is legally obligated to provide Covad with unbundled loops that meets the Bellcore TR 397/ANSI T1.601 standard. Covad's interconnection agreement with SWBT specifically states that SWBT will provide Covad with a "2-Wire Digital Loop (e.g., ISDN/IDSL)" that "supports Basic Rate IDSN (BRI) digital exchange services" in a manner that "supports usable bandwidth up to 160 kbps." The direct references to "BRI ISDN" and "IDSL" in the operative portions of the Interconnection Agreement make it clear that SWBT has a binding legal obligation to provide loops to Covad that meet the appropriate standards.

7. Certain slots on the Marconi DISC*S system installed by SWBT in Texas simply do not provide for a loop that meets the TR 397 standard. The issue lies with the Marconi digital loop carrier ("DLC") system that SWBT has chosen to install in its local plant—the problem is *not* with Covad's IDSL or SWBT's ISDN equipment. In particular, slots 1-4 do not support IDSL technology and ISDN technology under certain conditions. Slot 12 does not support 2B+D ISDN technology.

8. Covad has encountered this issue with the Marconi DISC*S DLC system for more than one year and with several other incumbent LECs. Covad first encountered

the issue in U S WEST territory last year and Covad has faced the issue with BellSouth. I have testified on the issue on several occasions.

9. Upon discovering this defect in the Marconi DISC*S system, Covad initiated diagnostic testing of the system with Marconi personnel, and this testing process discovered that ISDN loops provisioned over certain slots in the Marconi DISC*S system do not comply with the Bellcore TR 000393/ANSI T1.601 standard. As a result, those slots can not always support standard-based IDSL or ISDN services.

10. By design, the last slot in each DISC*S digroup does not support 2B+D ISDN BRI. It is my understanding that ILECs "tag" this slot to prevent assigning their retail ISDN services. The same procedure could be used to tag slots for CLEC IDSL services. In my opinion, if an ILEC has a policy of "tagging" their retail ISDN orders to avoid this issue but refuses to tag CLEC IDSL orders for the same purpose, that ILEC is engaging in discriminatory conduct.

ISDN is IDSL

11. At a technical level, set forth in the standards and technical references, there is no difference between ISDN and IDSL. Bellcore Technical Reference 393[1] simply specifies the physical layer of the local exchange network needed to support the digital transmission of ISDN and IDSL services. Nothing more than a TR393 compliant loop is required to provision IDSL. Further, there is nothing in TR 393 that in any way restricts its use or applicability to ISDN.

12. BRI ISDN is a digital service that consists of three digital channels—two 64 kbps channels (the "B" channels) and one 16 kbps channel (the "D" channel). The

[1] Attached to Covad's March 10, 2000 *ex parte* presentation in this proceeding.

term "2B+D" refers to the collection of all three of those channels into one 144 kbps user data stream. The standard, Bellcore TR 393, describes the physical characteristics of the outside plant that is required to support 2B+D.

13. ISDN Digital Subscriber Line, or "IDSL", is an all-digital technology that is designed to work over TR393 complaint loops in 2B+D mode. The primary difference between IDSL technology and ISDN equipment is that IDSL operates in an "always on" mode, as opposed to ISDN, which still requires the end user to make a "call" to establish the digital connection.

14. It is incorrect to infer that IDSL technology is somehow not compliant with relevant industry standards. Bellcore TR 000393, the technical reference for BRI ISDN services, clearly states that ISDN BRI is a "Digital Subscriber Line Service." That standard describes what a loop should look like physically in order to support services that utilize 2B+D. Therefore, if SWBT provides Covad with a loop that meets the appropriate standard, Covad's IDSL technology will work over that loop.

15. From a discrimination standpoint, the fact that IDSL technology detects a problem with the ability of SWBT's DLC equipment to provide a compliant loop that is not detected by SWBT's IDSN technology is irrelevant. It is not an excuse for SWBT to fail to provide loops to CLECs that do not meet the relevant Bellcore technical standard.

Rebuttal of Specific Points of the Chapman/Dysart Affidavit

16. The Chapman/Dysart Supplemental Affidavit contains several misstatements of the technical issues involved and discussions between SBC and CLECs. These misstatements mischaracterize and distort the technical issues and appear to have been made in the context of this proceeding to confuse the issue of SWBT's poor

delivery of BRI ISDN loops to Covad and other CLECs. I have been Covad's "point person" on this issue with SBC and other ILECs, and I have participated in numerous technical meetings and discussions. In the course of these proceedings, I have met and discussed this issue with several SBC personnel—but until today I have never met or had a discussion Ms. Chapman or Mr. Dysart. I have also been involved in the diagnostic testing directly with Marconi on this issue, and, to my knowledge, neither Ms. Chapman nor Mr. Dysart have been involved in that process. As a result, I do not believe that they have been directly involved at the engineering and operational level for SBC with regard to this issue.

17. *The Root Cause is **Not** Just Time Delay with the D Channel.* Chapman and Dysart mischaracterize the "root of the problem" (paragraph 52) as being "the time delay that the D channels in the DISC*S systems incur [sic] on slots 1 through 4 of each group." That statement is incorrect. The root cause is more fundamental than Chapman/Dysart's characterization that CLECs want to bond the additional 16 kbps in the D channel to the two B channels. When served by any of the first four slots of any DISC*S digroup, the individual B channels do not maintain time slot integrity relative to each other.

18. Chapman/Dysart's misstatement of the "root cause" is important because their later arguments relating to the "viable option" of limiting CLEC IDSL to 128 kbps depends on this mischaracterization. Since the problem slots also do not lock the two B channels to one another, CLEC IDSL provided through those slots will not operate at 128 kbps. I can personally attest to this fact based on experiments and observations made in the field as well as in Marconi's laboratories. Because of the lack of time slot integrity

between the individual B channels, IDSL is limited to 64 kbps. This is not a "viable option", because that data throughput is little more than analog dial-up speed.

19. *The Problem is with SBC Equipment, not CLEC Equipment.* Chapman and Dysart also indicate that CLEC's "terminal equipment must be designed with buffering to account for the timing difference between channels going across the network" (Chapman/Dysart Supp. Aff. ¶ 52). With this characterization, SWBT attempts to hoist the "blame" on CLECs and our equipment vendors for not deploying and designing IDSL equipment that takes into account the timing problems caused by SWBT's equipment.

20. This position is unacceptable. The timing problem is due to the bug in the DISC*S system that SWBT (and other ILECs) have chosen to install on their outside loop plant. SWBT has a contractual obligation to provide Covad with a loop that meets the appropriate standards. When SWBT provides Covad a loop that passes through one of these problem slots, the loop does not meet the appropriate industry standard. The onus should be upon SWBT to repair the engineering flaws in its outside plant. It should not be incumbent upon CLECs to add cost and complexity to our equipment to make up for this bug in SWBT's equipment.

21. *A New "IDSL Loop" Element need not be Developed.* Chapman and Dysart suggest in ¶ 53 that "a new loop offering specific to IDSL has yet to be developed." This statement indicates that an "IDSL loop" would somehow be different than the "2-Wire Digital Loop" that SWBT is already contractually obligated to provide Covad and other CLECs. As I stated above, SWBT is *already* obligated to provide

Covad with a "2-Wire Digital Loop (e.g., ISDN/IDSL)"—an obligation that clearly indicates that SWBT must provide a loop that supports both ISDN and IDSL technology.

22. I understand that Covad and SWBT finalized this Texas interconnection agreement after more than one year of arbitration before the Texas regulatory commission, a proceeding in which SWBT could (and did) raise technical and operational issues related to its interconnection and unbundling obligations. In my opinion, the fact that SWBT has now belatedly discovered that it cannot provide compatible loops within the contracted interval and at parity to its retail ISDN services is not a justification for SWBT to seek to create a "new loop offering."

23. Chapman and Dysart also indicate in paragraph 60 that SWBT has "already begun deployment of a new IDSL loop" that will utilize "a new type of channel unit." Chapman and Dysart imply that this "new IDSL loop" will somehow be different than a standard ISDN loop, i.e., that IDSN will not work over this new "IDSL loop". As I describe above, a properly-provided ISDN loop will support IDSL technology. I am unclear how Chapman and Dysart could produce to the FCC a "channel unit" that will support IDSL but not ISDN services.

24. *ISDN does not Operate over Certain DISC*S Slots.* Chapman and Dysart state that the DISC*S first four problem slots that do not work for IDSL "function properly for ISDN" (¶ 53). Chapman and Dysart also state that "ISDN will work when assigned to any of the channels of the DISC*S pair gain system" (¶ 55). Both statements are false.

25. There is a mode of ISDN operation, called Zero Byte Suppression (ZBS) that is necessary for ISDN when the DISC*S system uses AMI T1s as the method of

transporting the digital signal between the CO and remote terminals. When the DISC*S system is deployed in this manner, the B channels cannot carry a full byte of zeros. As a result, a non-zero byte must be substituted for transport over the AMI T1. An indicator bit is placed in the time slot carrying the D channel that instructs the system to ignore the data in the B channel and replace it with a zero byte when the data is extracted from the transport circuit. If the integrity between the D and B channels is broken, this indicator bit will be associated with the wrong B channel frame and ISDN will not work over the system. The first four slots in the Marconi DISC*S system improperly fail to maintain this integrity. Therefore, if SWBT deploys the DISC*S system with AMI T1 as the feeder, ISDN will not work over the same slots that cause Covad's IDSL service to fail.

26. In addition, as I discussed above, the last slot of each digroup in the DISC*S system does not support *either* 2B+D ISDN or IDSL. As a result, Chapman and Dysart are completely incorrect in stating that "IDSN will work when assigned to any of the channels of the DISC*S pair gain system" (¶ 55). The restriction on the use of channel 12 has always existed, and it is my understanding that SBC's assignment system (like other ILECs) automatically works around this limitation. I do not understand how Chapman and Dysart could make this representation if they had had any direct experience providing ISDN over the Marconi DISC*S system.

27. Because ISDN does not work over the last slot, ILECs like SWBT have experience in building administrative systems that either prohibit the assignment of ISDN to particular channels on the DISC*S system or operational procedures that move ISDN services off incompatible channels. Therefore, when Chapman and Dysart claim that "additional effort" is "required to provide 2-wire BRI digital loop over the DISC*S pair

gain system for use with IDSL" than is necessary for providing retail ISDN services, that statement is incorrect. The same type of administrative or operational procedures to prevent retail ISDN from being assigned to the last slot of the digroup can be utilized to prevent CLEC IDSL loops from being assigned to the first four channels and channel 12.

28. In my opinion, the fact that SWBT may have automated the administrative or operational work-around for retail ISDN but not for CLEC IDSL is tantamount to an admission that CLECs are receiving inferior, discriminatory service.

29. *SWBT's "Viable Options" are not Viable.* In paragraphs 57-62, Chapman and Dysart discuss three "viable options" that CLECs may utilize to avoid the faults of the Marconi DISC*S system. All three proposals are not viable.

30. Chapman and Dysart first suggest that CLECs simply order xDSL-capable loops instead of ISDN/IDSL loops. This alternative fails to recognize the reality of how data CLECs sell and provide services. In general, Covad will only provide a consumer with an IDSL service *only* as a last-resort. In general, Covad's customers prefer SDSL or ADSL service, which provide far more bandwidth than 144 kbps supported by IDSL. In general, Covad will order an ISDN/IDSL loop from an incumbent LEC *only after* Covad's original request for an xDSL-capable loop has been rejected by the incumbent LEC. Such rejections might include loop length or the presence of DLC (such as the Marconi DISC*S) system. Chapman and Dysart recognize this possibility, stating in paragraph 58 that "this option will not completely eliminate the technology problem."

31. In paragraph 59, Chapman and Dysart present a second alternative: that the problem Marconi DISC*S slots would function if the CLEC would "limit the transmission speed to 128 kbps." That is simply not true. As I discussed before, the

Marconi system also contains a timing problem between the two B channels, not just with the D channel. As a result, IDSL will not operate at 128 kbps through the problem DISC*S slots. Once again, Chapman and Dysart demonstrate their lack of complete understanding of this issue.

32. The third "viable option" proposed is for SWBT to develop "a new type of channel unit" as part of an new IDSL loop product. As I discussed in paragraph 23 of this Declaration, SWBT is *already* contractually obligated to provide Covad with a loop that supports ISDN and IDSL technologies. SWBT should have already developed administrative and operational procedures to provide Covad with a loop that meets these industry standards. The fact that SWBT now has "in the development stage" a solution does not change the reality that *at this time*, SWBT cannot reliably provide Covad and other data CLECs with functional BRI ISDN loops on a nondiscriminatory basis. In my opinion, it is not a "viable" alternative to require Covad's customers to wait for service, especially when a simple nondiscriminatory administrative fix is available.

33. *Other Issues.* In paragraph 61, Chapman and Dysart indicate that a Rhythms representative indicated at a meeting that Rhythms was working with its vendor, Copper Mountain, to resolve this issue. Like any engineering issue, there are often cheap and easy ways to work around this bug—and there are also expensive and complicated ways. As I stated earlier, the cheap –and easy way to resolve this issue is to resolve it in the same manner that ILECs do for their own ISDN services—by administratively tagging the problem slots to avoid assignment. It should be no surprise that because of SWBT's refusal to provide this solution, CLEC engineers will look for other solutions. Requiring CLEC customers to assume the cost and expense of SWBT's

mistake in deploying flawed equipment is inconsistent with the goals of nondiscrimination.

34. Finally, in paragraph 61, Chapman and Dysart refer to a quote by an unnamed "Covad representative" that inquired about how Covad could "cost effectively bring in your Network Timing into our [Covad] network." This question has nothing to do with the Marconi DISC*S issue or SWBT's delivery of functional BRI ISDN loops to Covad. The question had to do with the maximizing the quality of IDSL service once the loop is up and running. Covad has since made improvements to its network timing distribution systems so as to maximize IDSL reliability. As a result, this discussion of network timing should have no impact on SWBT's performance results, which show considerable discrimination in providing functional loops.

Conclusion

35. In conclusion, it is clear to me that Chapman and Dysart do not have a clear, fundamental understanding of the Marconi DISC*S problem. It appears to me that Chapman and Dysart are attempting to use this engineering issue to justify SWBT's poor provisioning performance with regard to BRI ISDN loops. In several instances, Chapman and Dysart mischaracterize the engineering issues and fail to understand that these issues are caused by SWBT's failure to deliver the standards compliant ISDN/IDSL loop that they are contractually obligated to provide.

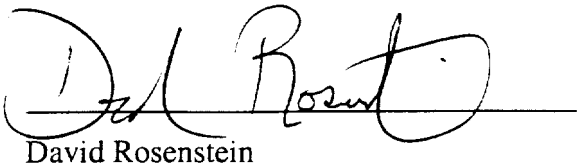
36. Chapman and Dysart's discuss three "viable options" that would permit Covad to deploy IDSL service "without encountering the difficulties" associated with the DISC*S pair gain system. As discussed above, those options are not viable. Requesting that CLECs simply order an xDSL-capable loop is not a viable option, because data

CLECs like Covad only tend to order IDSL loops when our initial order for an xDSL-capable loop is rejected due to loop length or presence of DLC.[2] Limiting speed to 128 kbps is not possible either, because the problem slots also have a timing problem between the two B channels. As a result, this "viable option" simply does not exist. The third "viable option" would have CLECs wait for SWBT to produce a "new type of channel unit" that is "still in the development stage" (¶ 60). That is, SWBT expects CLECs simply to wait for SWBT to fix the problem caused by their own equipment.

37. In my opinion, the only "viable option" that makes sense is for SWBT and other ILECs to treat CLEC IDSL loop orders in the same administrative and operational manner that they treat their ISDN orders—by tagging the problem slots so as to prevent assignment of the service on a slot that does not support this service. This solution is the most cost-effective and is nondiscriminatory. The solution is also consistent with SWBT's contractual obligation to provide Covad with a functional, "ISDN/IDSL" loop. To date, SWBT has refused to provide this solution to CLECs. Covad is not asking that SWBT be "penalized" for the failings of the Marconi DISC*S system; Covad only asks that SWBT not be excused from its poor loop delivery performance by referring to engineering problems that are of its own making.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 25, 2000



David Rosenstein

[2] Chapman and Dysart admit that this option "will not completely eliminate the technology problem" for this very reason. *See* Chapman/Dysart Supp. Aff. ¶ 58.